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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,569	07/16/2001	Thomas Jessberger	178/49971	2330

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CROWELL & MORING LLP  
INTELLECTUAL PROPERTY GROUP  
P.O. BOX 14300  
WASHINGTON, DC 20044-4300

EXAMINER

NGUYEN, TRAN N

ART UNIT PAPER NUMBER

2834

DATE MAILED: 10/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/904,569

Applicant(s)

JESSBERGER, THOMAS

Examiner

Tran N. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 06 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 7, 13 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1, 5, 8 and 11 is/are rejected.
- 7) ☐ Claim(s) 2-4, 6, 9, 10, 12 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6. 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Election/Restriction***

2. Applicant's election of claims 1-6, 8-12 and 14, in Paper No. 9, filed on 9/6/02, is acknowledged. Since Applicant did not provide any traversal arguments to the restriction requirement, the response is considered as election without traverse; therefore, the election/restriction is made FINAL.

### ***Claim Rejections - 35 USC § 112***

3. **Claims 5 and 11** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**In claims 5 and 11**, "comprising two arresting elements" is indefinite because it is unclear whether two of these arresting element is the previously recited arresting element in the independent claims 1 and 8 or not. If the first is true, the recitation should be the control unit further comprising a second arresting element.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1 and 8** are rejected under **35 U.S.C. 102(b)** as being fully anticipated by Schmid (US 5920136).

Schmid discloses a control unit with drive device having a motor comprising: a stator (19); a permanent magnet rotor (13, 18) and a drive shaft (1), wherein the motor is provided with a releasable arresting element (12) interposed between movable part, i.e. shaft (1) and stationary part, i.e., stator (19). The arresting element is engaged for holding the drive shaft (1) in a set position.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1 and 8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Wistinghausen(US 4059779) in view of level of ordinary skills in the art.

Wistinghausen discloses a control unit with drive device having a motor comprising: a stator (2); a rotor (3) and a drive shaft (6), wherein the motor is provided with a releasable arresting element (8-16, fig 2) interposed between movable part, i.e. shaft (1) and stationary part, i.e., stator housing (14). The arresting element is engaged for holding the drive shaft (6) in a set position. Wistinghausen substantially discloses the claimed invention, except for the rotor having permanent magnet (PM).

Those skilled in the art would understand that motor having a stator with electromagnetic windings and a rotor with rotary PM is well known in the art. Rotors with PM would provide reliable magnetic field interaction between the rotor and the stator since the rotor magnetic

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source is permanent magnet. On the other hand, rotors with electromagnetic windings or conductor bars to generate magnetic field interaction with the stator are more likely controllable through the control of input current into the windings or the conductor bars. Thus, it would have been obvious to an artisan, as a matter of obvious engineering design choice, to modify the Wistinghausen's rotor to be a PM rotor based upon a particular industrial application of the motor because PM rotors are well known in the art.

Thus, it would have been obvious to one skilled in the art at the time the invention was made to modify the Wistinghausen's rotor to be a PM rotor. Doing so would provide the rotor with highly reliable source of magnetic fields to interact with the stator resulting in ensure reliability of the motor. Furthermore, it would have been obvious to an artisan, as a matter of obvious engineering design choice, to modify the Wistinghausen's rotor to be a PM rotor because motors with PM rotors are well known in the art.

#### ***Allowable Subject Matter***

**Claims 2-4, 6, 9-10, 12 and 14** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Claims 5 and 11** would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### ***Communication***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tran N Nguyen whose telephone number is (703) 308-1639. The examiner can normally be reached on M-F 6:00AM-2:30PM.

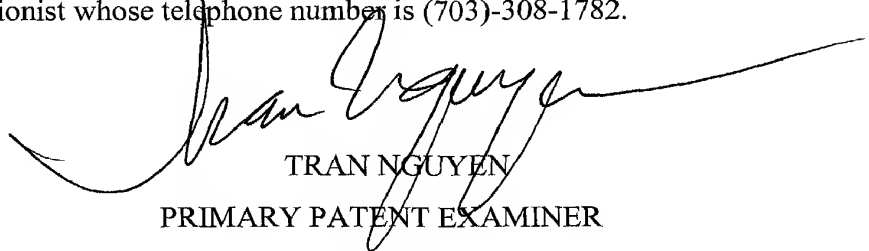
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nestor Ramirez can be reached on (703)-308-1371. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3431 for regular communications and (703)-395-3432 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1782.

A handwritten signature in black ink, appearing to read 'Tran Nguyen', is written over the printed name and title.

TRAN NGUYEN

PRIMARY PATENT EXAMINER

TC-2800